S.B. CIVIL WRIT PETITION NO. 4559/1993.

(Ex. L/NK BEGA RAM VS. UNION OF INDIA & ORS.)

DATE OF ORDER : 29.11.2006.

HON'BLE MR. GOVIND MATHUR, J.

Mr. S.K. Nanda for the petitioner.
Mr. Vineet Mathur }
Mr. M.S. Godara } for the respondents.

The petitioner joined Indian Army on 27.09.83 and after successful training a posting was given to him as Lans Nayak with 4th Battalion Rajputana Rifles. On 13.09.92, the petitioner was detailed to perform Petroleum Duty and while doing so, it is alleged that he involved in heated arguments with Shri Jai Karan and as such for an act of using threatening language to his superior officers, a summary of evidence was recorded and the petitioner was court martial ed by Summary Court Martial on 23.09.92 awarding punishment of dismissal from service with 6 months' Rigorous Imprisonment. The appeal / representations submitted by the petitioner also came to be rejected by the order dated 02.08.93, hence this petition for writ is preferred.

Beside the others, the main contention of the petitioner to challenge the order impugned is of violation of the provisions of Rule 115(2) of the Army Rules, 1956 (herein after referred to as "the Rules of 1956"). Rule 115(2) pertains to general plea of "guilty" or "not guilty", and that reads as follows:-

> "If an accused person pleads "guilty", that plea shall be recorded as the finding of the court; but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that pleading and in particular of the meaning of the charge to which he has pleaded guilty and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty."

The contention of counsel for the petitioner is that the court while recording guilty of the petitioner violated the provisions of Rule 115(2) of the Rules of 1956 as much as no signatures of the petitioner as well as the court were taken while recording such guilty. It is further contended that the court also not adhered the procedure prescribed under Rule 115(2) as no understanding about the nature of charge and the effect of

pleading guilty was given to the accused-petitioner. It is straneously urged that as a matter of fact the petitioner never pleaded guilty.

Per contra, it is contended by counsel for the respondents that entire procedure was adhered while recording guilty of the petitioner and the Commanding Officer also certified compliance of the provisions of Rule 115(2) of the Rules of 1956.

Heard learned counsel for the parties.

A copy of the court martial proceedings is placed on record by the petitioner and that does not bears any certification by the Commanding Officer certifying compliance of the provisions of Rule 115(2) of the Rules of 1956. However, the same is available there in photo stat copy of the same document that is placed on record by the respondents along with their reply as Annexure R/3. In view of this discrepancy, this Court directed the petitioner to produce copy of the summary proceedings that was supplied to him by the respondents. Accordingly, the same is placed on record by counsel for the petitioner.

From perusal of the copy referred above that is placed on record, it is apparent that no certificate given by Commanding Officer certifying compliance of the provisions of Rule 115 of the Rules of 1956 was affixed or pasted on it. This Court also directed the respondents to produce original of the documents Annexure R/3 and that is also shown to the Court by the respondents. In the original document, a typed leaf containing certification of the compliance of the provisions of Rule 115 of the Rules of 1956 is pasted.

From perusal of the original document, all doubts about affixing of the certificate at a subsequent stage exists as no certification at all is pasted or affixed or typed or even referred in the copy of the document concerned that was supplied to the petitioner while he was undergoing imprisonment.

Be that as it may, without entering into the question as to whether such certificate was given or not, it is the position admitted from perusal of the original record that plea of guilty was neither signed by the petitioner nor by the Court. A Division Bench of this Court in the case of Union of India vs. Ex. Sepoy Chander Singh reported in 1997(6) SLR -643, while dealing with the effect of not getting signatures of the accused held as under:

> "Thus, the said judgment suggests a serious consideration at the time of judicial review in spite of the fact that the writ court cannot sit in appeal against the order of the court martial proceedings and the learned single Judge after examining the entire record has correctly recorded the finding that the provisions of R. 115(2) have also not been complied with. Even otherwise, there is nothing to be examined as an appellate court because there is no evidence on record. The respondent pleaded guilty and the officer incharge awarded the punishment. We has sen the original record produced by Mr. Chaudhary and our conscience was shocked after finding out that the guilt recorded by the officer incharge, alleged to have been made by the respondent does not even bear the signature of the respondent. In such a case, the sanctity of such confession becomes doubtful."

Hon'ble Jammu and Kashmir High Court also in the case of Prithpal Singh vs. Union of India reported in 1984(3) SLR – 675, while considering the impact of non-compliance of the provisions of Rule 115(2) of the Rules of 1956 held as under:

> "The most important aspect of the case is as to whether the petitioner had pleaded guilty to the charges as is suggested by Mr. Hussain or not. Plea of guilt recorded by Lt. Col. Mehta is dehors R. 115 of

the Army Rules. In the first place the alleged plea of guilt is unsigned by the authorities. Surprisingly the petitioner also has not signed the alleged plea of guilt. At what stage word "guilty" was recorded against each charge is not known. It if was recorded in presence of the accused-petitioner obviously his signatures would have been obtained on it. Then the minutes of the enquiry should have contained an advice to the petitioner not to plead guilty as enjoined by R. 115 of the Army Rules. This important mandate of the Rule has been flagrantly violated. Therefore the proceedings conducted by the Summary Court Martial which have affected the petitioner's fundamental rights as he is deprived of his job are vitiated. The protection afforded by the procedure should not have been denied to the petitioner if it was intended to proceed against him under the Army Rules. As to whether charges were correct or not as already observed this court cannot go into that aspect of the mater. But certainly this court will set aside the punishment which is awarded to the petitioner on the ground that the decision to punish the petitioner was taken by contravening the mandate of Rules. Such a decision would be arbitrary and shall be violative of the guarantees contained in Art. 14 of the Constitution. The argument of the learned counsel for the respondent that the petitioner was not prejudiced in any manner during the Summary Court Martial proceedings is devoid of force. The petitioner has suffered punishment of dismissal from service and the punishment is awarded by conducting proceedings in

such a manner which were neither fair not judicial. Could the Summary Court Martial observe the Rules governing the conduct of Summary Court Martial in breach. Answer to this question will be emphatic no in view of the glory of the Constitution and rights guaranteed by it."

In view of the Division Bench judgment of this Court in the case of Union of India vs. Ex- Sepoy Chander Singh (supra), it was obligatory upon the respondents to get the plea of guilty signatured by the petitioner as well as by the court. This Court in the case of Ex-Sepoy Chander Singh (supra) quite unambiguous term held that the sanctity of the plea of guilty, if not signed by the accused becomes doubtful. In the case of Prithpal Singh vs. Union of India and others (supra), Jammu and Kashmir High Court held that the non-compliance of the provisions of Rule 115(2) of the Rules of 1956 to the extent by not getting the plea of guilty signatured by the accused, amounts to violation of Article 14 of the Constitution of India.

Learned counsel for the respondents has placed reliance upon the judgment of the High Court of Madhya Pradesh in the case of Ismail Khan vs. General Officer Comanding-in-Chief and others reported in Mil LJ 2004 MP 55. The learned Single Judge of the Madhya Pradesh High Court by the judgment

aforesaid held that the High Court cannot go in disputed questions of fact as to whether plea of guilty was genuinely recorded or not. The reliance so placed is absolutely misplaced for the simple reason that the non-compliance of the provisions of Rule 115(2) of the Rules of 1956 is totally a different thing then to examine merit of the plea of guilty. The effect of non – signing of the plea of guilty by the accused is examined by Division Bench of this Court in the case of Ex. Sepoy Chander Singh and in view of that I am of the considered opinion that the plea of guilty recorded by the Summary Court Martial is illegal being not having signed by the accused and also by the court and that vitiates the entire court martial proceedings.

In view of whatever discussed above, this petition for writ deserves acceptance, the same, therefore, is allowed. The proceedings of summary court martial against the petitioner dated 23.09.92 (Annexure 7) is declared illegal and, therefore, is quashed. The petitioner has already undergone the sentence of Rigorous Imprisonment for a period of six months, therefore, to settle the equities, I direct the respondents to make the payment of Rs.30,000/- to him as compensation. The penalty of dismissal stands quashed and the respondents are directed to reinstate the petitioner in service with all consequential benefits.

No order to cost.

(GOVIND MATHUR)J.

Anil/